



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,197	05/31/2001	L. Jeffrey Kapner III	A0807	1905
35219 7590 11/18/2008 WESTERN DIGITAL TECHNOLOGIES, INC. ATTN: LESLEY NING 20511 LAKE FOREST DR. E-118G LAKE FOREST, CA 92630				
EXAMINER				
USTARIS, JOSEPH G				
ART UNIT		PAPER NUMBER		
2424				
MAIL DATE		DELIVERY MODE		
11/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/872,197

**Applicant(s)**

KAPNER ET AL.

**Examiner**

JOSEPH G. USTARIS

**Art Unit**

2424

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed July 21, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant also argues with respect to claims 1-24 that Gagnon does not disclose a plurality of different channel icons that are associated with respective video program providers. However, reading the claims in the broadest sense, Gagnon does meet that limitation in the claims. Gagnon discloses the use of icons as identifiers (See Figs. 5 and 7, icons/logos 224), wherein the icons are associated with respective video program providers (See Figs. 5 and 7, e.g. ABC, CBS, Comedy Central, and MTV). ABC, CBS, Comedy Central, and MTV are known as video program providers. Furthermore, it is noted that Wehmeyer discloses channels that are broadcast television networks or cable providers (See Fig. 1, e.g. CBS and HBO). The icons used by Gagnon, despite it representing a website, also represent a distribution of information to

a broad audience much like channels in a broadcast television network. Therefore, one of ordinary skill in the art would recognize that using icons as identifiers for the channels would enhance how the program guide is displayed (See Gagnon col. 3 lines 15-21).

Applicant also argues Knudson does not disclose selecting one of the plurality of different channel icons in response to the first input and channel icons. However, it is noted that the limitations of selecting one of the plurality of different channel icons in response to the first input and channel icons are met by Wehmeyer and Gagnon as discussed in the rejection below.

Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Claim Objections***

2. Claim 8 is objected to because of the following informalities: Claim 8 recites "channel icons". The word "icons" is underlined; however no amendments were made to the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-7, 9-11, 13-15, 17-19, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wehmeyer et al. (US005867226A) in view of Gagnon et al. (US006522342B1) and Knudson et al. (US006564379B1).

Regarding claim 1, Wehmeyer et al. (Wehmeyer) discloses a client terminal (400R) connectable to a head end (400T and 401) and a display device (403) (See Fig. 4), the head end provides program guide information including first program data associated with a first program and second program data associated with a second program (See col. 3 lines 41-64; Master Program Guide includes data for all programs), the client terminal comprising:

a channel input interface to receive the program guide information (See Fig. 4, 400A; col. 3 lines 41-64);

a user interface to receive a first input and a second input (See Fig. 4, 412R and 450R; wherein the remote control sends multiple commands from the user to the receiver 450R); and

a terminal controller responsive to an on screen display (OSD) control program (See Fig. 4, 415R; col. 4 lines 57-62) for:

displaying an arrangement of a plurality of different channel identifiers (See Fig. 1, row blocks for CBS, UPN, CINE, etc.) in a plurality of rows simultaneously on the display device;

selecting one of the plurality of different channel identifiers in response to the first input (See Figs. 1 and 4, the user selects the CINE channel via remote; col. 2 lines 20-32); and

displaying a pop-up (See Fig. 1, 120) for the selected channel identifier (CINE channel) on the display device (403) while still displaying the arrangement of the plurality of different channel identifiers (See Fig. 1, row blocks for CBS, UPN, CINE, etc.);

wherein:

the pop-up displays the first program data (See Fig. 1, 120; Producer, Rating, and Theme) associated with the first program (See Fig. 1, ZULU) of the selected channel identifier (CINE) in response to the first input (user selecting the CINE channel).

However, Wehmeyer does not explicitly disclose that the identifiers are icons, the icons are associated with respective video program providers, the pop-up overlaying at least one other channel icon, displaying the plurality of different channel icons in a plurality of rows and columns, receiving the second input while the pop-up is displaying the first program data and the pop-up displays the second program data associated with the second program of the selected channel icon in response to the second input while the arrangement of the plurality of different channel icons in the plurality of rows and columns is still displayed and the pop-up continues to overlay the at least one other channel icon.

Gagnon et al. (Gagnon) discloses a program guide system. Gagnon discloses the use of icons as identifiers (See Figs. 5 and 7, icons/logos 224), wherein the icons

are associated with respective video program providers (See Figs. 5 and 7, e.g. ABC, CBS, Comedy Central, and MTV), the pop-up overlaying at least one other channel icon (See Fig. 6, the pop-up 234 overlays at least one other channel icon), and displaying the plurality of different channel icons in a plurality of rows and columns (See Figs. 5 and 7). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system disclosed by Wehmeyer to have icons as the identifiers, wherein the icons are associated with respective video program providers, the pop-up overlaying at least one other channel icon, and displaying the plurality of different channel icons in a plurality of rows and columns, as taught by Gagnon, in order to enhance how the program guide can be displayed, how much information can be incorporated into the guide, and how quickly and efficiently the user can move through the guide (See col. 3 lines 15-21).

Knudson et al. (Knudson) discloses a program guide system. Knudson discloses a first input also wherein the user can switch from flip mode to browse mode by pressing one of the cursor keys or "selecting one of the plurality of different channel icons in response to the first input" (e.g. current flip mode displays "6 KRMA" and user switches to browse mode by pressing one of the cursor keys) (See column 7 lines 4-7). The browse display 70 in browse mode is a pop-up for the selected channel icon, wherein the browse display 70 is displayed in response to the user pressing one of the cursor keys during the current flip mode and will still display the arrangement of the plurality of different channel icons (See Figs. 4 and 5; column 7 lines 4-7). The browse display 70 displays the first program data associated with the first program of the

selected channel icon (See Fig. 4, 6 KRMA Big Comfy couch 10:30 AM) in response to the first input (e.g. the first time the cursor keys are pressed) (See Fig. 4) and the user interface receives the second input (e.g. operating the cursor keys again during browse mode) while the pop-up is displaying the first program data and the browse display 70 displays a second program data associated with the second program of the selected channel icon in response to the second input (e.g. the user presses the left or right cursor keys to view other program listings corresponding to the current channel icon that occur prior or after 10:30 AM) (See Fig. 4; column 6 lines 26-50). Furthermore, Knudson discloses that the pop-up continues to overlay the screen behind the pop-up (See Fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pop-up window and system disclosed by Wehmeyer to receive the second input while the pop-up is displaying the first program data and the pop-up displays the second program data associated with the second program of the selected channel icon in response to the second input and the pop-up continues to overlay the at least one other channel icon, as taught by Knudson, in order to enhance the way user interacts with the interactive program guide (See col. 1 lines 34-58). Furthermore, Wehmeyer in view of Gagnon and Knudson discloses the arrangement of the plurality of different channel icons in the plurality of rows and columns is still displayed with the pop-up (See Wehmeyer Fig. 1 and Gagnon Figs. 5 and 7).

Regarding claim 2, the browse display 70 includes a next icon, such that the second input selects the next icon resulting in the display of a second program data that



is associated with a second program that occurs after the first program (See Knudson Fig. 4, right arrow 72; column 6 lines 26-50).

Regarding claim 3, the browse display 70 includes a previous icon, such that the second input selects the previous icon resulting in the display of a second program data that is associated with a second program that occurs before the first program (See Knudson Fig. 4, left arrow 72; column 6 lines 26-50).

Regarding claim 5, the program guide information displayed in the browse display includes a channel number (6), a channel identifier (KRMA), a program time (10:30 AM), and a title of the program (Big Comfy Couch) (See Knudson Fig. 4).

Regarding claim 6, the program guide information displayed in the browse display further includes a description of the program (the program occurs at 10:30 AM) (See Knudson Fig. 4).

Regarding claim 7, the channel icons represents broadcast channels or satellite channels (See Knudson column 3 line 59 – column 4 line 6 and Wehmeyer Fig. 1).

Claim 9 contains the limitations of claim 1 (where inherently the STB runs a computer program embodied in a computer readable storage medium in order to successfully perform its functions) and is analyzed as previously discussed with respect to that claim.

Claim 10 contains the limitations of claims 2 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 11 contains the limitations of claims 3 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 13 contains the limitations of claims 5 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 14 contains the limitations of claims 6 and 13 and is analyzed as previously discussed with respect to those claims.

Claim 15 contains the limitations of claims 7 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 17 contains the limitations of claim 1 (wherein the STB performs the method) and is analyzed as previously discussed with respect to that claim.

Claim 18 contains the limitations of claims 2 and 17 and is analyzed as previously discussed with respect to those claims.

Claim 19 contains the limitations of claims 3 and 17 and is analyzed as previously discussed with respect to those claims.

Claim 21 contains the limitations of claims 5 and 17 and is analyzed as previously discussed with respect to those claims.

Claim 22 contains the limitations of claims 6 and 21 and is analyzed as previously discussed with respect to those claims.

Claim 23 contains the limitations of claims 7 and 17 and is analyzed as previously discussed with respect to those claims.

5. Claims 4, 12, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wehmeyer et al. (US005867226A) in view of Gagnon et al. (US006522342B1) and

Knudson et al. (US006564379B1) as applied to claims 1, 9, and 17 above, and further in view of Alexander et al. (US006177931B1).

Claim 4 contains the limitations of claim 1 and is analyzed as previously discussed with respect to that claim. However, Wehmeyer in view of Gagnon and Knudson does not disclose a record icon resulting in the recording of the first program in a local memory.

Alexander et al. (Alexander) discloses an electronic program guide that includes a record icon, whereupon when a user selects the record icon the system records the program (See Fig. 1, Record 46; column 7 line 58 – column 8 line 3). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the electronic program guide display disclosed by Wehmeyer in view of Gagnon and Knudson to include a record icon, such that the second input selects the record icon resulting in the recording of the first program, as taught by Alexander, in order to provide the user with easy access to record a program that is currently being watched so the user may watch the recorded program at a time that is more convenient.

Wehmeyer in view of Gagnon, Knudson, and Alexander does not expressly disclose storing the recorded program in local memory. Official Notice (MPEP 2144.03) is taken that both the concepts and advantages of recording in a local memory are well known and expected in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have the recording be stored in a local memory in order to have a faster access to the recorded program.

Claim 12 contains the limitations of claims 4 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 20 contains the limitations of claims 4 and 17 and is analyzed as previously discussed with respect to those claims.

6. Claims 8, 16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wehmeyer et al. (US005867226A) in view of Gagnon et al. (US006522342B1) and Knudson et al. (US006564379B1) as applied to claims 1, 9, and 17 above, and further in view of Jerding (US006463586B1).

Claim 8 contains the limitations of claim 1 and is analyzed as previously discussed with respect to that claim. However, Wehmeyer in Gagnon and Knudson does not disclose that the client terminal displays predetermined channel icons in a predetermined order set by the user.

Jerding discloses a service navigation system for an electronic program guide. Jerding discloses that a client terminal is able to display predetermined channel icons in a predetermined order set by the user (See column 3 lines 11-19). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the STB and program guide system disclosed by Wehmeyer in Gagnon and Knudson to be able to display predetermined channel icons in predetermined order set by the user, as taught by Jerding, in order to provide a electronic program guide that is more powerful and extensible then mere channel number navigation (See column 3 lines 11-19).

Claim 16 contains the limitations of claims 8 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 24 contains the limitations of claims 8 and 17 and is analyzed as previously discussed with respect to those claims.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH G. USTARIS whose telephone number is (571)272-7383. The examiner can normally be reached on M-F 7:30-5 PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph G Ustaris/  
Primary Examiner, Art Unit 2424